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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

In re X.R., a Person Coming Under the Juvenile Court Law.	
SOLANO COUNTY HEALTH AND SOCIAL SERVICES DEPARTMENT, Plaintiff and Respondent, v. LLOYD R., Defendant and Appellant.	A134993 (Solano County Super. Ct. No. J40303)

The juvenile court terminated family reunification services after Lloyd R. (father) and R.P. (mother) failed to address chronic domestic violence that risked harm to their infant daughter, X.R. (Welf. & Inst. Code, § 366.21, subd. (e).)[1] Several months later, and shortly before a scheduled section 366.26 permanent planning hearing, father filed a petition to modify the order terminating reunification services, claiming changed circumstances (§ 388). The court denied the petition, terminated parental rights and ordered X.R. placed for adoption. On appeal, father contests the order denying modification and terminating parental rights. We shall affirm the order.

[1] All further section references are to the Welfare and Institutions Code.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

Mother has mental health issues that include low cognitive functioning and personality disorders. Mother was raised as a dependent child of the court in the care of her aunt. At age 16, mother gave birth to a son. The infant was removed from her custody and placed with the aunt. Less than two years later, mother gave birth to a daughter who was also removed from her custody and placed with the aunt. The removals were necessitated by "issues of domestic violence and limited parenting capacity related to [mother's] developmental delays." A little more than a year later, when mother was 19 years old, she gave birth to X.R., the child at issue here.

Father is the presumed father of X.R. but not mother's other children. Father was 24 years old when X.R. was born and, at the time, had a four-year-old daughter L.R., and possibly two sons with other women (he questions paternity of the boys). Father and mother were living together at the time of X.R.'s birth. L.R. may also have been in the household although this is unclear on the record.

Mother and father have a history of domestic violence with each other and with previous partners. Father gave mother a black eye in April 2010, when she was six months pregnant with X.R. Father claims the injury was an accident that happened when the two were play wrestling, and mother later said the same thing. But, when pregnant, mother sent a text message to a friend asking, "What do you do when someone you love puts their hands on you?"

X.R. was born in July 2010 and, five days after her birth, the Solano County Health and Human Services Department (County) received a referral alleging neglect. The referral stated that the mother "is incapable of parenting alone due to her developmental delays" and father has a history of domestic violence. The County filed a petition to declare X.R. a dependent child of the court but did not remove X.R. from the parents' home. (§ 300, subds. (b), (j).) The child remained at home with family maintenance services.

In August 2010, when X.R. was one month old, the child was removed from her parental home and placed with the aunt who raised mother and cares for mother's other children. Removal was necessitated by a domestic violence episode in which father reportedly hit mother, called her "bitch[] and hoe[]," and threw her and her clothes from the house. Mother retaliated by vandalizing father's parked car with a brick and mop. A police officer called to the scene observed father outside the residence "yelling and screaming" at mother and walking toward her in an "enraged" state with his fists "balled up" at his sides. The officer called for backup and placed father in the rear of a patrol car. After things quieted, father insisted that mother be arrested and prosecuted for vandalism. The police arrested mother and transported her to jail but she was soon released.

A contested jurisdictional hearing was held in September 2010. The court sustained allegations that mother has developmental delays, "a history of impulsive and aggressive behavior" and "a history of domestic violence," both as victim and perpetrator, that places X.R. at substantial risk of serious physical harm. (§ 300, subd. (b).) Father's perpetration of domestic violence was also found to put X.R. at risk of physical harm. (*Ibid.*) The court noted that mother's other two children had been removed from her custody "due to issues of domestic violence and limited parenting capacity" and found a substantial risk that X.R. was likewise in danger. (§ 300, subd. (j).)

The County met with the parents to develop a case plan for family reunification. Father agreed to complete a parenting education class, obtain counseling, attend a support group, and develop a domestic violence relapse prevention plan. The County also arranged visitation between the parents and X.R. At a November 2010 disposition hearing, the court continued X.R. in the care of the aunt and ordered family reunification services consistent with the case plan.

The court held a special interim hearing in February 2011. In advance of the hearing, the County filed a report noting that father had failed to attend any support group sessions and attended only half of the parenting classes. Parenting classes were discontinued due to lack of participation but a County social worker found another

organization to provide services and the parents had started attending those classes the previous month.

In March 2011 there was a domestic violence incident between mother and father that involved physical violence and required police intervention, according to the aunt, who witnessed the incident. Another incident occurred in May 2011, when father accused mother of cheating and repeatedly punched her in the face. Mother called the aunt for help, who arrived to see mother stumbling out of the house with father behind her yelling "yes, I beat that bitch ass!" The police were called and they observed that mother had bleeding facial injuries and was "moaning in pain." A month later, father also committed acts of domestic violence against the mother of his older daughter, L.R.[2]

A six-month review hearing as to X.R. was held in August 2011, after several continuances. (§ 366.21.) X.R. was 13 months old and had lived all but the first month of her life with the maternal aunt. The County recommended termination of all family reunification services "due to continued domestic violence and minimal participation in services to address these issues."[3] As for father, the County observed: "he initially stated he would not engage in services as he believed he was not in need of support to prevent domestic violence in his relationship with [mother]. Throughout this reporting period [father] has received several referrals to participate in services [but] has not engaged in services. It is of concern to the [County] that [father] has continued [to] engage in domestic violence and has not made efforts to address the documented history of domestic violence in order to prevent future incidences of violence in the home. Based on this information the [County] recommends that family reunification services be terminated to [father] as there is not a substantial probability of return of [X.R.] to

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[2] L.R. was removed from father's custody at that time. L.R. was placed with maternal relatives and father was granted family reunification services that continued through at least January 2012. The ultimate disposition of L.R.'s case is not stated in the record.

[3] The County had initially recommended continued services in a report written in May 2011. The County changed its position following father's acts of domestic violence in May and June 2011.

[father] by the twelve month hearing." The court followed the County recommendations; it terminated all family reunification services and set a permanent plan hearing for November 2011. (§ 366.26.) The hearing was continued to February 2012.

In advance of the hearing, mother and father filed petitions for modification of the order terminating family reunification services. (§ 388.) Initially, the County supported father's request for reinstatement of services because father was participating in reunification services for his other daughter, L.R., and had completed a parenting course and attended classes to prevent domestic violence. The County changed its position when father's cooperation and engagement in court-ordered services proved short-lived. Father's participation in family reunification services began around November 2011 and lasted no more than two months. In late December 2011, father was terminated from domestic violence classes after missing sessions, angrily refusing to pay for the missed sessions, and telling the facilitators that "he does not need to be in nor does he want to be in counseling for domestic violence issues." Father also failed to attend therapy sessions and refused the County's request for information on his living arrangements. The County recommended that the court deny father's request for reinstatement of reunification services and proceed with the permanent plan hearing. The County further recommended that parental rights be terminated and X.R. placed for adoption. The aunt, X.R.'s caretaker for most of the child's life, expressed a commitment to adopting X.R.

The court denied father's motion to reinstate reunification services, terminated parental rights, and chose adoption as the permanent plan. Father filed a timely notice of appeal.

DISCUSSION

The juvenile court did not abuse its discretion in denying father's petition to reinstate family reunification services

Father claims the trial court erred in denying his section 388 petition for modification of the court's order terminating family reunification services. "Section 388 allows a parent or other person with an interest in a dependent child to petition the

juvenile court to change, modify, or set aside any previous order. (§ 388, subd. (a).) 'Section 388 provides the "escape mechanism" that . . . must be built into the process to allow the court to consider new information.' [Citations.] The petitioner has the burden of showing by a preponderance of the evidence (1) that there is new evidence or a change of circumstances *and* (2) that the proposed modification would be in the best interests of the child." (*In re Mickel O.* (2011) 197 Cal.App.4th 586, 615.) "The change of circumstances or new evidence 'must be of such significant nature that it requires a setting aside or modification of the challenged prior order.' [Citation.] [¶] In considering whether the petitioner has made the requisite showing, the juvenile court may consider the entire factual and procedural history of the case. [Citation.] The court may consider factors such as the seriousness of the reason leading to the child's removal, the reason the problem was not resolved, the passage of time since the child's removal, the relative strength of the bonds with the child, the nature of the change of circumstance, and the reason the change was not made sooner. [Citation.] In assessing the best interests of the child, 'a primary consideration . . . is the goal of assuring stability and continuity.' [Citation.] [¶] We review the juvenile court's denial of a section 388 petition for an abuse of discretion. [Citation.] The court 'exceeds the limits of legal discretion by making an arbitrary, capricious or patently absurd determination.' [Citation.] The test for abuse of discretion is whether the court exceeded the bounds of reason." (*Id.* at pp. 615-616.)

The court did not abuse its discretion here in denying father's petition to reinstate reunification services because father did not show changed circumstances warranting reinstatement. Father argues to the contrary, noting that as part of court-ordered services to assist reunification with his older daughter L.R., he completed a parenting course and "completed more than half of a domestic violence treatment program." But father waited more than a year after X.R.'s removal from home to take any interest in addressing his parenting and domestic violence problems and that interest was fleeting.

X.R. was removed from home in August 2010 after father's violent fight with mother required police intervention. Father dismissed the fight as "an isolated incident" and, despite escalating domestic violence over the following months, father denied the

problem and refused to participate in programs designed to treat the problem. The County reported that father said "he would not engage in services as he believed he was not in need of support to prevent domestic violence." Father did not participate in any programs until around November 2011, when he engaged in some reunification services ordered by the court overseeing the dependency case of his older daughter. Father completed a parenting course but was terminated from the domestic violence course in late December 2011. Father was terminated from the program after missing sessions, angrily refusing to pay for the missed sessions, and telling the facilitators that "he does not need to be in nor does he want to be in counseling for domestic violence issues." On appeal, father says he was terminated from the program for "expressing anger" and thinks it "ironic" that he "would be terminated from what is essentially anger management treatment, by virtue of expressing anger, when such is *precisely* what father was only halfway through treatment designed to *address.*" But father was not terminated for expressing anger. He was terminated because, after weeks of sessions, he continued to deny any need for domestic violence treatment. The program administrators concluded that father was not "benefitting from the classes" given his recalcitrant attitude and insistence that he does not need counseling for domestic violence. Father's brief and grudging participation in the domestic violence program did not show changed conditions but a continuation of the same conditions that necessitated X.R.'s removal from home.

Substantial evidence supports the juvenile court's order placing X.R. for adoption

Where, as here, a juvenile court finds that a child cannot be returned to her parents and that the child is likely to be adopted, the court must terminate parental rights and order the child placed for adoption unless the parent establishes that termination would be detrimental to the child under one of several specific statutory exceptions. (§ 366.26, subd. (c)(1)(B).) Father contends that he established one of these exceptions here, namely that he "maintained regular visitation and contact with the child and the child would benefit from continuing the relationship." (§ 366.26, subd. (c)(1)(B)(i).)

A finding that "no exceptional circumstance exists is customarily challenged on the sufficiency of the evidence." (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 575.) "On review of the sufficiency of the evidence, we presume in favor of the order, considering the evidence in the light most favorable to the prevailing party, giving the prevailing party the benefit of every reasonable inference and resolving all conflicts in support of the order." (*Id.* at p. 576.)

Substantial evidence supports the court's order here. Father did attend the majority of his twice-monthly supervised visits with X.R. and his interaction with her was "typically appropriate." He was observed "to feed, soothe, groom, show affection and interact with the minor during visitation." Father was "distracted by his phone" on a couple occasions, spending his short time with X.R. texting or talking on the phone, and once cut short his visit to attend a martial arts class. For the most part, however, father's visits with X.R. were positive.

Nonetheless, a County social worker noted that Father's "visits more closely resemble that of a familiar visitor than that of a primary caretaker" and he never progressed to unsupervised contact with X.R. The County concluded that father "has not made the most of his opportunities to interact with the minor" and has not "made caring for and bonding with [X.R.] his primary concern." The County contrasted X.R.'s superficial relationship with father with the deep bond X.R. shared with the aunt, who was X.R.'s caretaker for all but one month of the girl's life. During most of the County home visits, X.R. would sit in the aunt's lap while the aunt "feeds or simply holds her." The County concluded that X.R. "has developed a bond with her relative caregiver as [the aunt] has provided daily care and support for the minor. [X.R.] has thrived in [the aunt's] care due to [the aunt] demonstrating on a daily basis her desire, ability and commitment to meet not only the minor's physical needs, but her emotional needs as well." The County noted that the aunt is also the primary caregiver for X.R.'s two older half-siblings with whom X.R. "shares a close sibling bond." The County recommended terminating parental rights so that X.R. could be freed for adoption, hopefully by the aunt, and the court accepted that recommendation.

Substantial evidence supports the court's finding that any benefit X.R. would receive from continuing her relationship with father was outweighed by the benefit of adoption, whether by the aunt or someone else. Father argues X.R. will benefit from maintaining a relationship with her biological parent. It is true, of course, that "[i]nteraction between natural parent and child will always confer some incidental benefit to the child." (*In re Autumn H., supra,* 27 Cal.App.4th at p. 575.) But more than regular visitation and positive interactions between parent and child is needed "to deny a child who cannot be returned to her parents the secure and permanent home" that adoption provides. (*In re Elizabeth M.* (1997) 52 Cal.App.4th 318, 324.) "The type of parent-child relationship sufficient to derail the statutory preference for adoption is one in which 'regular visits and contact have continued or developed a significant, positive, emotional attachment from child to parent.' " (*Ibid.*)

The juvenile court reasonably found that X.R. had not developed a sufficiently positive emotional attachment to father to justify the denial of adoption. X.R. spent only the first month of her life with father and his "visits more closely resemble[d] that of a familiar visitor than that of a primary caretaker." Substantial evidence supports the court's finding that father does not have a strong parent-child relationship that "promotes the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents." (*In re Autumn H., supra,* 27 Cal.App.4th at p. 575.)

DISPOSITION

The order is affirmed.

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Pollak, J.

We concur:

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McGuiness, P. J.

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Siggins, J.